

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

CASE NO. 4:13-cr-00745

UNITED STATES OF AMERICA

v.

BILFINGER SE,

Defendant.

EXTENDED DEFERRED PROSECUTION AGREEMENT

Defendant Bilfinger SE (the “Company”), pursuant to authority granted by the Company’s Executive Board, and the United States Department of Justice, Criminal Division, Fraud Section (the “Section”), enter into this extended deferred prosecution agreement (the “Agreement”).

Criminal Information and Acceptance of Responsibility

1. In December, 2013, the Company and the Section entered into a Deferred Prosecution Agreement, which was filed in the United States District Court for the Southern District of Texas on December 9, 2013 (the “2013 Agreement”). Pursuant to the 2013 Agreement, the Section filed a three count criminal Information in the United States District Court for the Southern District of Texas charging the Company with (a) conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371, that is to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (“FCPA”), as amended, Title 15, United States Code, Sections 78dd-1 and 78dd-2 (Count One); and (b) violating, and aiding and abetting a violation of, the anti-bribery provisions of the FCPA, Title

15, United States Code, Sections 78dd-1 and 78dd-2 and Title 18, United States Code, Section 2 (Counts Two and Three). For the reasons described in Paragraph 5 below, the Company and the Section agree to modify the 2013 Agreement by entering into the Agreement. To the extent the terms and conditions of the 2013 Agreement and the Agreement conflict, the terms and conditions of the Agreement control. To the extent the Agreement does not address a term contained in the 2013 Agreement, the term from the 2013 Agreement remains in effect.

2. In entering into the 2013 Agreement, the Company: (a) knowingly waived its right to indictment on these charges, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waived any objection with respect to venue to any charges by the United States arising out of the conduct described in the Statement of Facts attached to the 2013 Agreement (“Statement of Facts”), and consented to the filing of the Information in the United States District Court for the Southern District of Texas. Pursuant to the 2013 Agreement, the Section agreed to defer prosecution of the Company for the charges in the Information, pursuant to the terms and conditions described in the 2013 Agreement. The Company expressly continues all such waivers as part of the Agreement.

3. The Company expressly continues to admit, accept, and acknowledge that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the Information, and as set forth in the Statement of Facts, and that the allegations described in the Information and the facts described in Attachment A to the 2013 Agreement are true and accurate. Should the Section pursue the prosecution that was deferred by the 2013 Agreement, and is deferred by this Agreement, the Company stipulates herein to the admissibility of the Statement of Facts in any proceeding, including any trial, guilty plea, or

sentencing proceeding, and again agrees to not contradict anything in the Statement of Facts at any such proceeding.

Term of the Agreement

4. This Agreement is effective for a period beginning on the date on which the Agreement is executed and ending on December 9, 2018 (the "Term"). The Company agrees, however, that, in the event the Section determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the Term may be imposed by the Section, in its sole discretion, for up to a total additional time period of one year, without prejudice to the Section's right to proceed as provided in Paragraphs 16-18 below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the monitorship in Attachment D, for an equivalent period. Conversely, in the event the Section finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the monitorship in Attachment D, and that the other provisions of this Agreement have been satisfied, the Term of the Agreement may be terminated early. If the Court rejects the Agreement, all the provisions of the Agreement shall be deemed null and void, and the Term shall be deemed to have not begun.

Relevant Considerations

5. The Section enters into this Agreement based on the individual facts and circumstances presented by this case and the Company. Among the factors considered were the following: (a) the monitor's inability to certify compliance with the compliance obligations in the 2013 Agreement after 18 months of monitorship; specifically, the monitor was not able to conclude that the Company's compliance program is reasonably designed and implemented to detect and prevent violations of the anti-corruption laws and is functioning effectively, which

conclusion the Section adopts and supports; (b) the Company's recognition and acknowledgment of its inability to satisfy the compliance obligations in the 2013 Agreement within the term of the 2013 Agreement, including its inability to implement (1) a system of internal controls designed to ensure the making and keeping of fair and accurate books, records and accounts, and (2) a rigorous anti-corruption compliance code, standards, and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws; (c) the Company's recent efforts to redesign and enhance its compliance program and internal accounting controls to ensure that its compliance program satisfies the minimum elements set forth in Attachment C to this Agreement; (d) the Company's recent dedication of substantially increased resources to its compliance, internal controls, and internal audit functions and its commitment to continue dedicating enhanced resources to these functions; (e) the Company's cooperation with the Department during the term of the 2013 Agreement, including investigating potential misconduct it or the Monitor discovered during the term of the 2013 Agreement and disclosing all of the relevant facts regarding the misconduct to the Department, including all relevant information regarding the individuals involved in the misconduct; (f) the Company's efforts to remediate the misconduct discovered during the term of the 2013 Agreement, including terminating the employment of certain employees responsible for the misconduct and disciplining others, and enhancing its compliance program and internal accounting controls; and (g) the Company's agreement to continue to cooperate with the Department in any ongoing investigation of the conduct of the Company and its officers, directors, employees, agents, and consultants relating to violations of the FCPA as provided in Paragraph 6 below.

Future Cooperation and Disclosure Requirements

6. The Company shall cooperate fully with the Section in any and all matters relating to the conduct described in the 2013 Agreement and Attachment A thereto and other conduct related to possible corrupt payments under investigation by the Section at any time during the Term of this Agreement, subject to applicable law and regulations, including applicable data protection and labor laws, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the Term specified in Paragraph 4. At the request of the Section, the Company shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks (“MDBs”), in any investigation of the Company, its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in the 2013 Agreement and Attachment A thereto and other conduct related to possible corrupt payments under investigation by the Section. The Company agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities, those of its parent company and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Section may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Section, upon request, any document, record or other tangible evidence about which the Section may inquire of the Company.

b. Upon request of the Section, the Company shall designate knowledgeable employees, agents or attorneys to provide to the Section the information and materials described in Paragraph 6(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. The Company shall use its best efforts to make available for interviews or testimony, as requested by the Section, present or former officers, directors, employees, agents and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Section pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government, as well as the MDBs, of such materials as the Section, in its sole discretion, shall deem appropriate.

7. In addition to the obligations in Paragraph 6, during the Term of the Agreement, should the Company learn of credible evidence or allegations of possible corrupt payments, the Company shall promptly report such evidence or allegations to the Section.

Conditional Release from Liability

8. Subject to Paragraphs 16-18, the Section agrees, except as provided in this Agreement, that it will not bring any criminal or civil case against the Company relating to any of the conduct described in the Statement of Facts or the criminal Information filed pursuant to

the 2013 Agreement or for the conduct that the Company disclosed to the Office prior to the signing of the 2013 Agreement. The Section, however, may use any information related to the conduct described in the Statement of Facts against the Company: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code.

a. This Agreement does not provide any protection against prosecution for any future conduct by the Company or any conduct engaged in after the signing of the 2013 Agreement, whether or not disclosed to the Section prior to the signing of this Agreement.

b. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with the Company.

Corporate Compliance Program

9. The Company represents that it is implementing and will continue to implement a compliance and ethics program throughout their operations, including those of its affiliates, agents, and joint ventures, and those of its contractors and subcontractors whose responsibilities include interacting with foreign officials or other activities carrying a high risk of corruption, designed to prevent and detect violations of the FCPA and other applicable anti-corruption laws.

10. In order to address any deficiencies in its internal accounting controls, policies, and procedures, the Company represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal accounting controls, policies, and procedures regarding compliance with the FCPA and other applicable anti-corruption laws. Where necessary and appropriate, the Company agrees to adopt a new compliance program, or to modify its existing one, including

internal controls, compliance policies, and procedures in order to ensure that it maintains: (a) an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance program that incorporates relevant internal accounting controls, as well as policies and procedures designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. The compliance program, including the internal accounting controls system will include, but not be limited to, the minimum elements set forth in Attachment C.

Independent Compliance Monitor

11. The Company agrees to continue its retention of the Monitor selected pursuant to the 2013 Agreement for the term specified in Paragraph 12. The Monitor's duties and authority, and the obligations of the Company with respect to the Monitor and the Section, are set forth in Attachment D, which is incorporated by reference into this Agreement.

12. The Monitor's term shall continue until December 9, 2018, subject to extension or early termination as described in Paragraph 4. The Monitor's powers, duties, and responsibilities, as well as additional circumstances that may support an extension of the Monitor's term, are set forth in Attachment D. The Company agrees that it will not employ or be affiliated with the Monitor or the Monitor's firm for a period of not less than three (3) years from the date on which the Monitor's term expires. Nor will the Company, during the Monitor's term, discuss with the Monitor or the Monitor's firm the possibility of further employment or affiliation.

Deferred Prosecution

13. In consideration of the factors outlined in the 2013 Agreement, Paragraph 5 of the Agreement, and the undertakings agreed to by the Company herein, the Section agrees that any

prosecution of the Company for the conduct set forth in the Statement of Facts, and for the conduct that the Company disclosed to the Section prior to the signing of the 2013 Agreement, will continue to be and hereby is deferred for the Term of this Agreement. The conduct disclosed by the Company after the signing of the 2013 Agreement is not exempt from further prosecution and is not within the scope of this Agreement or any other.

14. The Section further agrees that if the Company fully complies with all of its obligations under this Agreement, the Section will not continue the criminal prosecution against the Company described in Paragraph 1 and, at the conclusion of the Term, this Agreement shall expire. Within six (6) months of the Agreement's expiration, the Section shall seek dismissal with prejudice of the criminal Information filed against the Company described in Paragraph 1, and agrees not to file charges in the future against the Company based on the conduct described in the 2013 Agreement and Attachment A thereto.

Breach of the Agreement

15. If, during the Term, the Company (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) fails to cooperate as set forth in Paragraphs 6 and 7 of this Agreement; (d) fails to implement a compliance program as set forth in Paragraphs 10 and 11 of this Agreement and Attachment C; (e) commits any acts that, had they occurred within the jurisdictional reach of the FCPA, would be a violation of the FCPA; or (f) otherwise fails specifically to perform or to fulfill completely each of the Company's obligations under the Agreement, regardless of whether the Section becomes aware of such a breach after the Term of the Agreement is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which

the Section has knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the Section in the U.S. District Court for the Southern District of Texas or any other appropriate venue. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company shall be in the Section's sole discretion. Any such prosecution may be premised on information provided by the Company or its personnel. Any such prosecution relating to the conduct described in the Statement of Facts or relating to conduct known to the Section prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. The Company agrees that the tolling described herein is in addition to, and does not replace, the tolling of the statute of limitations pursuant to the 2013 Agreement. Thus, for any conduct for which the statute of limitations was tolled pursuant to the 2013 Agreement, this Agreement extends the tolling of the statute of limitations from the date upon which the statute was tolled pursuant to the 2013 Agreement to the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of federal law that occurs during the Term will be tolled from the date upon which the violation occurred or occurs until the earlier of the date upon which the Section is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

16. In the event the Section determines that the Company has breached this Agreement, the Section agrees to provide the Company with written notice prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Section in writing to explain the nature and circumstances of the breach, as well as the actions the Company has taken to address and remediate the situation, which the Section shall consider in determining whether to pursue prosecution of the Company.

17. In the event that the Section determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Section or to the Court, including the Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Section against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Section.

18. The Company acknowledges that the Section has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company

breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

19. Thirty (30) days after the expiration of the Term, the Company, by the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, will certify to the Department that the Company has met its disclosure obligations pursuant to Paragraph 6 of this Agreement. Each certification will be deemed a material statement and representation by the Company to the executive branch of the United States for purposes of 18 U.S.C. § 1001, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

Sale, Merger, or Other Change in Corporate Form of Company

20. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Company's consolidated operations or to the operations of any subsidiaries or affiliates involved in the conduct described in the Statement of Facts or the conduct disclosed to the Section during the term of the 2013 Agreement, as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The Company shall obtain approval from the Section at least thirty days prior to undertaking any such sale, merger, transfer, or other change in corporate form, including dissolution, in order to give the Section an opportunity to determine if such change in corporate form would impact the terms or obligations of the Agreement.

Public Statements by Company

21. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Company make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraphs 16-18 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to the Company for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Section. If the Section determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Section shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. The Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

22. The Company agrees that if it, or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult with the Section to determine (a) whether the text of the release

or proposed statements at the press conference are true and accurate with respect to matters between the Section and the Company; and (b) whether the Section has any objection to the release.

23. The Section agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement or the 2013 Agreement, including the nature and quality of the Company's cooperation and remediation. By agreeing to provide this information to such authorities, the Section is not agreeing to advocate on behalf of the Company, but rather is agreeing to provide facts to be evaluated independently by such authorities.

Limitations on Binding Effect of Agreement

24. This Agreement is binding on the Company and the Section but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Section will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

Notice

25. Any notice to the Section under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to -Chief, FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, NW, Bond Building, Eleventh Floor, Washington, DC 20530. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to General

Counsel, Bilfinger SE, Carl Reiss Platz 1-5, 68165, Mannheim, Germany.. Notice shall be effective upon actual receipt by the Section or the Company.

Complete Agreement

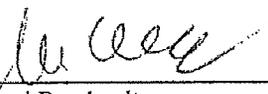
26. This Agreement, including its attachments, sets forth all the terms of the agreement between the Company and the Section. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Section, the attorneys for the Company and a duly authorized representative of the Company.

AGREED:

FOR BILFINGER SE:

Date: 10.9.16

By: 
Tom Blades
Chairman of the Executive Board
Bilfinger SE

By: 
Michael Bernhardt
Chief Human Resource Officer and Member
of the Executive Board
Bilfinger SE

Date: _____

By: _____
Stephen Fishbein
Philip Urofsky
Shearman & Sterling LLP

FOR THE DEPARTMENT OF JUSTICE:

Andrew Weissmann
Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: _____

By: _____
Laura N. Perkins
Assistant Chief

AGREED:

FOR BILFINGER SE:

Date: _____

By: _____
Tom Blades
Chairman of the Executive Board
Bilfinger SE

By: _____
Michael Bernhardt
Chief Human Resource Officer and Member
of the Executive Board
Bilfinger SE

Date: September 19, 2016

By: Stephen Fishbein
Stephen Fishbein
Philip Urofsky
Shearman & Sterling LLP

FOR THE DEPARTMENT OF JUSTICE:

Andrew Weissmann
Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: _____

By: _____
Laura N. Perkins
Assistant Chief

AGREED:

FOR BILFINGER SE:

Date: _____

By: _____

Tom Blades
Chairman of the Executive Board
Bilfinger SE

By: _____

Michael Bernhardt
Chief Human Resource Officer and Member
of the Executive Board
Bilfinger SE

Date: _____

By: _____

Stephen Fishbein
Philip Urofsky
Shearman & Sterling LLP

FOR THE DEPARTMENT OF JUSTICE:

Andrew Weissmann
Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: 9/23/16

By:  _____

Laura N. Perkins
Assistant Chief

COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Bilfinger SE (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Executive Board of the Company. I have advised and caused outside counsel for the Company to advise the Executive Board fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Chairman of the Executive Board for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

Date: 18.9.16

By: 

Tom Blades
Chairman of the Executive Board
Bilfinger SE

COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Bilfinger SE (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Executive Board of the Company. I have advised and caused outside counsel for the Company to advise the Executive Board fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Chief Human Resource Officer and Member of the Executive Board for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

Date: 18.9.16

By: 
Michael Bernhardt
Chief Human Resource Officer and Member
of the Executive Board
Bilfinger SE

CERTIFICATE OF COUNSEL

I am counsel for Bilfinger SE (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Executive Board of the Company. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with the Executive Board and the General Counsel of the Company. I have fully advised them of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the Executive Board, is an informed and voluntary one.

Date: September 19, 2016

By: 
Stephen Fiskbein
Shearman & Sterling LLP
Counsel for Bilfinger SE

ATTACHMENT B

CERTIFICATE OF CORPORATE RESOLUTIONS

WHEREAS, Bilfinger SE (the “Company”) has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the “Section”) regarding issues arising in relation to the Company’s compliance with the terms of the Deferred Prosecution Agreement entered into between the Company and the Section in December 2013 (“2013 Agreement”); and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the Section (the “Agreement”); and

WHEREAS, Tom Blades, the Company’s Chairman of the Executive Board, together with outside counsel for the Company, have advised the Executive Board of the Company of its rights, possible defenses, the Sentencing Guidelines’ provisions, and the consequences of entering into such agreement with the Section;

Therefore, the Executive Board has RESOLVED that:

1. The Company agrees to modify the 2013 Agreement as described in the Agreement;

2. The Company accepts the terms and conditions of the Agreement, including, but not limited to, (a) a knowing waiver of its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) a knowing waiver for purposes of this Agreement and any charges by the United States arising out of the conduct described in the Statement of Facts of any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Southern District of Texas;

and (c) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the Statement of Facts or relating to conduct known to the Section prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement.

3. The Chairman of the Executive Board, Tom Blades, and the Chief Human Resource Officer and Member of the Executive Board, Michael Bernhardt, are hereby authorized, empowered and directed, on behalf of the Company, to execute the Modified Deferred Prosecution Agreement substantially in such form as reviewed by this Executive Board at this meeting with such changes as Messers Blades and Bernhardt may approve;

4. The Chairman of the Executive Board, Tom Blades, and the Chief Human Resource Officer and Member of the Executive Board, Michael Bernhardt, are hereby authorized, empowered and directed to take any and all actions as may be necessary or appropriate and to approve the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Chairman of the Executive Board, Tom Blades, and the Chief Human Resource Officer and Member of the Executive Board, Michael Bernhardt, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.

Date: 19.9.16

By: 
Olaf Schneider
Corporate Secretary and General Counsel
Bilfinger SE

ATTACHMENT C

CORPORATE COMPLIANCE PROGRAM

In order to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, and other applicable anti-corruption laws, Bilfinger SE (the “Company”) agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, the Company agrees to adopt new or to modify existing internal controls, compliance code, policies, and procedures in order to ensure that it maintains: (a) a system of internal accounting controls designed to ensure that the Company makes and keeps fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance program that includes policies and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of the Company’s existing internal controls, compliance code, policies, and procedures:

High-Level Commitment

1. The Company will ensure that its directors and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of the anti-corruption laws and its compliance code.

Policies and Procedures

2. The Company will develop and promulgate a clearly articulated and visible corporate policy against violations of the FCPA and other applicable foreign law counterparts

(collectively, the “anti-corruption laws,”), which policy shall be memorialized in a written compliance code.

3. The Company will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of the anti-corruption laws and the Company’s compliance code, and the Company will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of the anti-corruption laws by personnel at all levels of the Company. These anti-corruption policies and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of the Company in a foreign jurisdiction, including but not limited to, agents and intermediaries, consultants, representatives, distributors, teaming partners, contractors and suppliers, consortia, and joint venture partners (collectively, “agents and business partners”). The Company shall notify all employees that compliance with the policies and procedures is the duty of individuals at all levels of the company. Such policies and procedures shall address:

- a. gifts;
- b. hospitality, entertainment, and expenses;
- c. customer travel;
- d. political contributions;
- e. charitable donations and sponsorships;
- f. facilitation payments; and
- g. solicitation and extortion.

4. The Company will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the

maintenance of fair and accurate books, records, and accounts. This system should be designed to provide reasonable assurances that:

- a. transactions are executed in accordance with management's general or specific authorization;
- b. transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;
- c. access to assets is permitted only in accordance with management's general or specific authorization; and
- d. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Periodic Risk-Based Review

5. The Company will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of the Company, in particular the foreign bribery risks facing the Company, including, but not limited to, its geographical organization, interactions with various types and levels of government officials, industrial sectors of operation, involvement in joint venture arrangements, importance of licenses and permits in the Company's operations, degree of governmental oversight and inspection, and volume and importance of goods and personnel clearing through customs and immigration.

6. The Company shall review its anti-corruption compliance policies and procedures no less than annually and update them as appropriate to ensure their continued effectiveness, taking into account relevant developments in the field and evolving international and industry standards.

Proper Oversight and Independence

7. The Company will assign responsibility to one or more senior corporate executives of the Company for the implementation and oversight of the Company's anti-corruption compliance code, policies, and procedures. Such corporate official(s) shall have the authority to report directly to independent monitoring bodies, including internal audit, the Company's Board of Directors, or any appropriate committee of the Board of Directors, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

Training and Guidance

8. The Company will implement mechanisms designed to ensure that its anti-corruption compliance code, policies, and procedures are effectively communicated to all directors, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, sales, legal, compliance, finance), or positions that otherwise pose a corruption risk to the Company, and, where necessary and appropriate, agents and business partners; and (b) corresponding certifications by all such directors, officers, employees, agents, and business partners, certifying compliance with the training requirements.

9. The Company will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners, on complying with the Company's anti-corruption compliance code, policies, and procedures, including when they need advice on an urgent basis or in any foreign jurisdiction in which the Company operates.

Internal Reporting and Investigation

10. The Company will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners concerning violations of the anti-corruption laws or the Company's anti-corruption compliance code, policies, and procedures.

11. The Company will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of the anti-corruption laws or the Company's anti-corruption compliance code, policies, and procedures.

Enforcement and Discipline

12. The Company will implement mechanisms designed to effectively enforce its compliance code, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

13. The Company will institute appropriate disciplinary procedures to address, among other things, violations of the anti-corruption laws and the Company's anti-corruption compliance code, policies, and procedures by the Company's directors, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived importance of, the director, officer, or employee. The Company shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code,

policies, and procedures and making modifications necessary to ensure the overall anti-corruption compliance program is effective.

Third-Party Relationships

14. The Company will institute appropriate risk-based due diligence and compliance requirements pertaining to the retention and oversight of all agents and business partners, including:

- a. properly documented due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;
- b. informing agents and business partners of the Company's commitment to abiding by anti-corruption laws, and of the Company's anti-corruption compliance code, policies, and procedures; and
- c. seeking a reciprocal commitment from agents and business partners.

15. Where necessary and appropriate, the Company will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the anti-corruption laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of the anti-corruption laws, the Company's compliance code, policies, or procedures, or the representations and undertakings related to such matters.

Mergers and Acquisitions

16. The Company will develop and implement policies and procedures for mergers and acquisitions requiring that the Company conduct appropriate risk-based due diligence on potential new business entities, including appropriate FCPA and anti-corruption due diligence by legal, accounting, and compliance personnel.

17. The Company will ensure that the Company's compliance code, policies, and procedures regarding the anti-corruption laws apply as quickly as is practicable to newly acquired businesses or entities merged with the Company and will promptly:

a. train the directors, officers, employees, agents, and business partners consistent with Paragraph 8 above on the anti-corruption laws and the Company's compliance code, policies, and procedures regarding anti-corruption laws; and

b. where warranted, conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable.

Monitoring and Testing

18. The Company will conduct periodic reviews and testing of its anti-corruption compliance code, policies, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of anti-corruption laws and the Company's anti-corruption code, policies, and procedures, taking into account relevant developments in the field and evolving international and industry standards.

ATTACHMENT D

INDEPENDENT COMPLIANCE MONITOR

The duties and authority of the Independent Compliance Monitor (the “Monitor”), and the obligations of Bilfinger SE (the “Company”), on behalf of itself and its subsidiaries and affiliates, with respect to the Monitor and the United States Department of Justice, Criminal Division, Fraud Section (the “Section”), are as described below:

1. The Company will continue its retention of the Monitor selected pursuant to the Deferred Prosecution Agreement that was filed in the United States District Court for the Southern District of Texas on December 9, 2013 (the “2013 Agreement”) for the term of the Extended Deferred Prosecution Agreement (“Term of the Monitorship”), unless the early termination provision of Paragraph 4 of the Extended Deferred Prosecution Agreement (the “Agreement”) is triggered.

Monitor’s Mandate

2. The Monitor’s primary responsibility is to assess and monitor the Company’s compliance with the terms of the Agreement, including the Corporate Compliance Program in Attachment C, as well as the Monitor’s recommendations from his previous two reports, so as to specifically address and reduce the risk of any recurrence of the Company’s misconduct. During the Term of the Monitorship, the Monitor will evaluate, in the manner set forth below, the effectiveness of the internal accounting controls, record-keeping, and financial reporting policies and procedures of the Company as they relate to the Company’s current and ongoing compliance with the FCPA and other applicable anti-corruption laws (collectively, the “anti-corruption laws”) and take such reasonable steps as, in his or her view, may be necessary to fulfill the foregoing mandate (the “Mandate”). This Mandate shall include an assessment of the Executive

Board's and senior management's commitment to, and effective implementation of, the corporate compliance program described in Attachment C of the Agreement.

Company's Obligations

3. The Company shall cooperate fully with the Monitor, and the Monitor shall have the authority to take such reasonable steps as, in his or her view, may be necessary to be fully informed about the Company's compliance program in accordance with the principles set forth herein and applicable law, including applicable data protection and labor laws and regulations. To that end, the Company shall: facilitate the Monitor's access to the Company's documents and resources; not limit such access, except as provided in Paragraphs 5-6; and provide guidance on applicable local law (such as relevant data protection and labor laws). The Company shall provide the Monitor with access to all information, documents, records, facilities, and employees, as reasonably requested by the Monitor, that fall within the scope of the Mandate of the Monitor under the Agreement. The Company shall use its best efforts to provide the Monitor with access to the Company's former employees and its third-party vendors, agents, and consultants.

4. Any disclosure by the Company to the Monitor concerning corrupt payments, false books and records, and internal accounting control failures shall not relieve the Company of any otherwise applicable obligation to truthfully disclose such matters to the Section, pursuant to the Agreement.

Withholding Access

5. The parties agree that no attorney-client relationship shall be formed between the Company and the Monitor. In the event that the Company seeks to withhold from the Monitor access to information, documents, records, facilities, or current or former employees of the

Company that may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where the Company reasonably believes production would otherwise be inconsistent with applicable law, including data protection and labor laws, the Company shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor.

6. If the matter cannot be resolved, at the request of the Monitor, the Company shall promptly provide written notice to the Monitor and the Section. Such notice shall include a general description of the nature of the information, documents, records, facilities or current or former employees that are being withheld, as well as the legal basis for withholding access. The Section may then consider whether to make a further request for access to such information, documents, records, facilities, or employees.

*Monitor's Coordination with the
Company and Review Methodology*

7. In carrying out the Mandate, to the extent appropriate under the circumstances, the Monitor should coordinate with Company personnel, including in-house counsel, compliance personnel, and internal auditors, on an ongoing basis. The Monitor may rely on the product of the Company's processes, such as the results of studies, reviews, sampling and testing methodologies, audits, and analyses conducted by or on behalf of the Company, as well as the Company's internal resources (e.g., legal, compliance, and internal audit), which can assist the Monitor in carrying out the Mandate through increased efficiency and Company-specific expertise, provided that the Monitor has confidence in the quality of those resources.

8. The Monitor's reviews should use a risk-based approach, and thus, the Monitor is not expected to conduct a comprehensive review of all business lines, all business activities, or all markets. In carrying out the Mandate, the Monitor should consider, for instance, risks presented by: (a) the countries and industries in which the Company operates; (b) current and

future business opportunities and transactions; (c) current and potential business partners, including third parties and joint ventures, and the business rationale for such relationships; (d) the Company's gifts, travel, and entertainment interactions with foreign officials; and (e) the Company's involvement with foreign officials, including the amount of foreign government regulation and oversight of the Company, such as licensing and permitting, and the Company's exposure to customs and immigration issues in conducting its business affairs.

9. In undertaking the reviews to carry out the Mandate, the Monitor shall formulate conclusions based on, among other things: (a) inspection of relevant documents, including the Company's current anti-corruption policies and procedures; (b) on-site observation of selected systems and procedures of the Company at sample sites, including internal accounting controls, record-keeping, and internal audit procedures; (c) meetings with, and interviews of, relevant current and, where appropriate, former directors, officers, employees, business partners, agents, and other persons at mutually convenient times and places; and (d) analyses, studies, and testing of the Company's compliance program.

Monitor's Written Work Plans

10. To carry out the Mandate, during the Term of the Monitorship, the Monitor shall conduct an initial review and prepare an initial report, followed by at least two follow-up reviews and reports as described in Paragraphs 16-19 below. With respect to the initial report, after consultation with the Company and the Section, the Monitor shall prepare the first written work plan under this Agreement by October 4, 2016, and the Company and the Section shall provide comments within fifteen calendar days after receipt of the written work plan. With respect to each follow-up report, after consultation with the Company and the Section, the Monitor shall prepare a written work plan at least thirty calendar days prior to commencing a review, and the

Company and the Section shall provide comments within fifteen calendar days after receipt of the written work plan. Any disputes between the Company and the Monitor with respect to any written work plan shall be decided by the Section in its sole discretion.

11. All written work plans shall identify with reasonable specificity the activities the Monitor plans to undertake in execution of the Mandate, including a written request for documents. The Monitor's work plan for the initial review shall include such steps as are reasonably necessary to conduct an effective initial review in accordance with the Mandate, including by developing an understanding, to the extent the Monitor deems appropriate, of the facts and circumstances surrounding any violations that may have occurred before the date of the Agreement. In developing such understanding the Monitor is to rely to the extent possible on available information and documents provided by the Company.

Initial Review

12. The initial review shall commence no later than November 3, 2016 (unless otherwise agreed by the Company, the Monitor, and the Section). In advance of the initial review, the Monitor shall conduct targeted interim reviews (the "Targeted Interim Reviews"), the content and timing of which will be agreed upon by the Monitor, the Company, and the Section. Any disputes with respect to the content and timing of the Targeted Interim Reviews shall be decided by the Section in its sole discretion. With regard to the interim reviews, the Monitor shall provide written findings and recommendations to the Company and the Section a reasonable time after the conclusion of the respective reviews. With regard to the initial review, the Monitor shall issue a written report within one hundred fifty calendar days of commencing the initial review, setting forth the Monitor's assessment and, if necessary, making recommendations reasonably designed to improve the effectiveness of the Company's program

for ensuring compliance with the anti-corruption laws. The Monitor should consult with the Company concerning his or her findings and recommendations on an ongoing basis and should consider the Company's comments and input to the extent the Monitor deems appropriate. The Monitor may also choose to share a draft of his or her reports with the Company prior to finalizing them. The Monitor's reports need not recite or describe comprehensively the Company's history or compliance policies, procedures and practices, but rather may focus on those areas with respect to which the Monitor wishes to make recommendations, if any, for improvement or which the Monitor otherwise concludes merit particular attention. The Monitor shall provide the report to the Executive Board of the Company and contemporaneously transmit copies to the Chief – FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, at 1400 New York Avenue N.W., Bond Building, Eleventh Floor, Washington, D.C. 20005. After consultation with the Company, the Monitor may extend the time period for issuance of the initial report for a brief period of time with prior written approval of the Section.

13. Within ninety calendar days after receiving the Monitor's initial report, the Company shall adopt and implement all recommendations in the report, unless, within twenty calendar days of receiving the report, the Company notifies in writing the Monitor and the Section of any recommendations that the Company considers unduly burdensome, inconsistent with applicable law or regulation, impractical, excessively expensive, or otherwise inadvisable. With respect to any such recommendation, the Company need not adopt that recommendation within the ninety days of receiving the report but shall propose in writing to the Monitor and the Section an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which the Company and the Monitor do not agree, such

parties shall attempt in good faith to reach an agreement within fifteen calendar days after the Company serves the written notice.

14. In the event the Company and the Monitor are unable to agree on an acceptable alternative proposal, the Company shall promptly consult with the Section. The Section may consider the Monitor's recommendation and the Company's reasons for not adopting the recommendation in determining whether the Company has fully complied with its obligations under the Agreement. Pending such determination, the Company shall not be required to implement any contested recommendation(s).

15. With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Section.

Follow-Up Reviews

16. A follow-up review shall commence no later than ninety calendar days after the issuance of the initial report (unless otherwise agreed by the Company, the Monitor and the Section). The Monitor shall issue a written follow-up report within one hundred and fifty calendar days of commencing the follow-up review, setting forth the Monitor's assessment and, if necessary, making recommendations in the same fashion as set forth in Paragraph 12 with respect to the initial review. After consultation with the Company, the Monitor may extend the time period for issuance of the follow-up report for a brief period of time with prior written approval of the Section.

17. Within ninety calendar days after receiving the Monitor's follow-up report, the Company shall adopt and implement all recommendations in the report, unless, within twenty calendar days after receiving the report, the Company notifies in writing the Monitor and the

Section concerning any recommendations that the Company considers unduly burdensome, inconsistent with applicable law or regulation, impractical, excessively expensive, or otherwise inadvisable. With respect to any such recommendation, the Company need not adopt that recommendation within the ninety calendar days of receiving the report but shall propose in writing to the Monitor and the Section an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which the Company and the Monitor do not agree, such parties shall attempt in good faith to reach an agreement within fifteen calendar days after the Company serves the written notice.

18. In the event the Company and the Monitor are unable to agree on an acceptable alternative proposal, the Company shall promptly consult with the Section. The Section may consider the Monitor's recommendation and the Company's reasons for not adopting the recommendation in determining whether the Company has fully complied with its obligations under the Agreement. Pending such determination, the Company shall not be required to implement any contested recommendation(s). With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Section.

19. The Monitor shall undertake a second follow-up review pursuant to the same procedures described in Paragraphs 16-18. Following the second follow-up review, the Monitor shall certify whether the Company's compliance program, including its policies and procedures, is reasonably designed and implemented to prevent and detect violations of the anti-corruption laws. The final follow-up review and report shall be completed and delivered to the Section no later than sixty days before the end of the Term.

Monitor's Discovery of Misconduct

20. (a) Except as set forth below in sub-paragraphs (b), (c) and (d), should the Monitor discover during the course of his or her engagement that:

- improper payments or anything else of value may have been offered, promised, made, or authorized by any entity or person within the Company or any entity or person working, directly or indirectly, for or on behalf of the Company; or
- the Company may have maintained false books, records or accounts;

(collectively, "Potential Misconduct"), the Monitor shall immediately report the Potential Misconduct to the Company's General Counsel, Chief Compliance Officer, and/or Audit Committee for further action, unless the Potential Misconduct was already so disclosed. The Monitor also may report Potential Misconduct to the Section at any time, and shall report Potential Misconduct to the Section when it requests the information.

(b) In some instances, the Monitor should immediately report Potential Misconduct directly to the Section and not to the Company. The presence of any of the following factors militates in favor of reporting Potential Misconduct directly to the Section and not to the Company, namely, where the Potential Misconduct: (1) poses a risk to public health or safety or the environment; (2) involves senior management of the Company; (3) involves obstruction of justice; or (4) otherwise poses a substantial risk of harm.

(c) If the Monitor believes that any Potential Misconduct actually occurred or may constitute a criminal or regulatory violation ("Actual Misconduct"), the Monitor shall immediately report the Actual Misconduct to the Section. When the Monitor discovers Actual Misconduct, the Monitor shall disclose the Actual Misconduct solely to the Section, and, in such

cases, disclosure of the Actual Misconduct to the General Counsel, Chief Compliance Officer, and/or the Audit Committee of the Company should occur as the Section and the Monitor deem appropriate under the circumstances.

(d) The Monitor shall address in his or her reports the appropriateness of the Company's response to disclosed Potential Misconduct or Actual Misconduct, whether previously disclosed to the Section or not. Further, if the Company or any entity or person working directly or indirectly for or on behalf of the Company withholds information necessary for the performance of the Monitor's responsibilities and the Monitor believes that such withholding is without just cause, the Monitor shall also immediately disclose that fact to the Section and address the Company's failure to disclose the necessary information in his or her reports.

(e) The Company nor anyone acting on its behalf shall take any action to retaliate against the Monitor for any such disclosures or for any other reason.

Meetings During Pendency of Monitorship

21. The Monitor shall meet with the Section within thirty calendar days after providing each report to the Section to discuss the report, to be followed by a meeting between the Section, the Monitor, and the Company.

22. At least annually, and more frequently if appropriate, representatives from the Company and the Section will meet together to discuss the monitorship and any suggestions, comments, or improvements the Company may wish to discuss with or propose to the Section, including with respect to the scope or costs of the monitorship.

Contemplated Confidentiality of Monitor's Reports

23. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, or impede pending or potential government investigations and thus undermine the objectives of the monitorship. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Section determines in its sole discretion that disclosure would be in furtherance of the Section's discharge of its duties and responsibilities or is otherwise required by law.